

VICTOR A. MARKUNAS
VICTORIA E. MARKUNAS

IBLA 90-467

Decided April 1, 1991

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting O'Konski Act application WIES 33206.

Reversed.

1. Act of August 24, 1954--Color or Claim of Title: Generally--Color or Claim of Title: Applications--Public Sales: Sales Under Special Statutes

Applicants who timely showed that they were owners of land in Wisconsin lying along a meander line, subsequently resurveyed, who held lands between the original meander and the water shown on the later survey and have, since Jan. 21, 1953, held the land in good faith and peaceful adverse possession, were entitled to purchase it under the Act of Aug. 24, 1954, known as the O'Konski Act, 43 U.S.C. § 1221 (1988).

APPEARANCES: Victor A. Markunas, Westboro, Wisconsin, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

The application of Victor A. Markunas and Victoria E. Markunas to purchase lands under the Act of August 24, 1954, known as the O'Konski Act, 43 U.S.C. § 1221 (1988), was here once before on appeal. Victor A. Markunas, 101 IBLA 187 (1988). In Markunas we remanded appellants' application to the Eastern States Office, Bureau of Land Management (BLM), for review pursuant to the O'Konski Act, following a rejection of the application by BLM which had used standards for review applied to color-of-title applications under the Act of December 22, 1928, the Color-of-Title Act, 43 U.S.C. § 1068 (1988).

The facts concerning this appeal were stated in Markunas at 187-88, and are therefore not repeated here. Appellants have been in possession of land in Wisconsin comprising roughly the E½ S½ NW¼, sec. 20, T. 33 N., R. 2 E., fourth principal meridian (lot 6), since 1973. This property was shown by an 1862 survey to adjoin Skinner Lake, when, in actuality, the lake was some distance away. A survey completed in 1983 created lot 9, comprising the land between the meander line of the 1862 survey of lot 6 and the actual lake shore. It is the land now designated as lot 9 that appellants seek to purchase.

On June 27, 1990, BLM rejected their application for a second time, finding, as it had done earlier, that standards of adjudication applicable in color-of-title cases should be applied to O'Konski Act adjudications. As applied by BLM to this application, that meant that an 1886 sheriff's sale was considered to constitute a defect in appellants' title which precluded sale to them under either the Color-of-Title Act or the O'Konski Act (Decision at 2). BLM reasoned in the decision under review that:

Lot 6 lies along the meander line as originally determined and as patented to Charles H. Gearhart February 20, 1883 * * *. Thus, the first requirement [of the O'Konski Act,] that a patent must have been issued prior to January 21, 1953, has been satisfied. The Act further requires that the land must have been held in peaceful adverse possession since the date of issuance of said patent adjoining public lands lying between the original meander line and the resurveyed meander line. Applying this requirement, the applicants' chain of title must extend unbroken from February 20, 1883, to the date of resurvey.

The chain of title submitted by the applicant indicates the property was sold to satisfy a certain writ of execution issued out of the Circuit Court of Taylor County by Sheriff's Deed recorded December 29, 1886. This 1886 Sheriff's sale breaks the chain of title in as much as there does not appear to be a conveyance from the original patentee, Charles H. Gearhart, to anyone.

The Department of Interior has consistently held in the case of applications made under the Color-of-Title Act, 43 U.S.C. 1068, 1068a, which also requires a period of continuous adverse possession, that a tax sale serves as an interruption in an applicants period of adverse possession.

Id.

The stated conclusion is erroneous, as appellants contend, for not all the standards that control review of color-of-title applications apply to O'Konski Act cases. James R. Biersack, 117 IBLA 339 (1991). In Biersack, after considering the legislative history of the O'Konski Act, we concluded:

There are important and fundamental differences between the O'Konski Act and the Color of Title Act. First, the Color of Title Act is not corrective legislation liberally construed in favor of those entitled to the benefits of the statute. Under the O'Konski Act, a person may apply for a patent to a "tract of public land, lying between the meander line of an inland lake or river in Wisconsin as originally surveyed and the meander line of that lake or river as subsequently resurveyed," if that land was held "in good faith and in peaceful, adverse possession by a person, or his predecessor in interest, who had been issued a patent, prior to January 21, 1953." [Footnote omitted.]

Id. at 346. Finding that it would be too narrow an interpretation of the Act to find a tax title issued prior to January 21, 1953, to be a title defect in a claim made pursuant to the O'Konski Act, we concluded it did not matter "that there may be a break in the chain of title between the date of patent and January 21, 1953, so long as there has been no break * * * since." Id. at 347.

The Biersack decision is controlling here. The 1886 tax sale cannot be considered to be a defect in appellants' claim of entitlement to purchase since it "issued prior to January 21, 1953." Id. Appellants' claim since then rests on an unbroken legal foundation. Consequently, they are entitled to the benefit of the O'Konski Act and should be allowed to purchase lot 9. Id.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed. The case file is remanded to BLM with instructions to approve appellants application for purchase pursuant to the O'Konski Act.

Franklin D. Arness
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge
